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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,222	09/24/2003	Ben K. Rice	142280/BRW003	8228
23444	7590	02/09/2005	EXAMINER	
ANDREWS & KURTH, L.L.P. 600 TRAVIS, SUITE 4200 HOUSTON, TX 77002			FERGUSON, MICHAEL P	
			ART UNIT	PAPER NUMBER
			3679	

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/671,222

Applicant(s)

RICE, BEN K.

Examiner

Michael P. Ferguson

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 7-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 08/16/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-6, drawn to a barrier, classified in class 256, subclass 24.
- II. Claims 7-12, drawn to a business method, classified in class 705, subclass 14.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the process for using the product as claimed can be practiced with another materially different product such as a chain link or wooden fence.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Gary L. Bush on January 31, 2005 a provisional election was made without traverse to prosecute the invention of I, claims 1-

6. Affirmation of this election must be made by applicant in replying to this Office action.

Claims 7-12 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention.

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### ***Specification***

5. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

### ***Claim Objections***

6. Claims 1 and 2 are objected to because of the following informalities:

Claim 1 (line 5) recites "said at least one section". It should recite --said barrier section--.

Claim 2 (line 2) recites "said two vertical supports is a vertical standard". It should recite --said two supports is a vertical stand--.

For the purpose of examining the application, it is assumed that appropriate correction has been made.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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8. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Hisatomi et al. (US 5,177,890).

As to claim 1, Hisatomi et al. disclose a barrier for securement to a floor comprising:

a barrier section having a plurality of horizontal support strips (outer periphery strips **24**) and a plurality of vertical support strips (outer periphery strips **22**), each of the plurality of horizontal support strips being fastened to each of the plurality of vertical support strips to form a rectangular web structure, the barrier section having mesh fabric superimposed on the rectangular web structure and attached thereto, and

two supports **12,14** having the barrier section coupled therebetween (Figures 1 and 2).

As to claim 2, Hisatomi et al. disclose a barrier wherein one of the two supports is a vertical stand **12** having a base (inherently) secured to the floor (Figure 1).

As to claim 3, Hisatomi et al. disclose a barrier comprising:

a plurality of cam buckles **20** fastened to the plurality of horizontal support strips (outer periphery strips **24**) to form a plurality of loops around one of the two supports **14** (Figure 1).

As to claim 4, Hisatomi et al. disclose a barrier comprising:

an advertisement banner **28** coupled to the barrier section (Figure 1).

As to claim 5, Hisatomi et al. disclose a barrier wherein the plurality of horizontal support strips (outer periphery strips **24**) are slightly elastic.

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9. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Long (US 5,407,178).

As to claim 1, Long discloses a barrier for securement to a floor comprising:  
a barrier section having a plurality of horizontal support strips **30,32** and a plurality of vertical support strips **34,36**, each of the plurality of horizontal support strips being fastened to each of the plurality of vertical support strips to form a rectangular web structure, the barrier section having mesh fabric **14** superimposed on the rectangular web structure and attached thereto, and

two supports **12,60** having the barrier section coupled therebetween (Figures 3 and 4).

As to claim 2, Long discloses a barrier wherein one of the two supports **12,60** is a vertical stand having a base secured to the floor (Figure 3).

As to claim 3, Long discloses a barrier comprising:  
a plurality of cam buckles **66,68** fastened to the plurality of horizontal support strips **30,32** to form a plurality of loops around one of the two supports **60** (Figure 4).

As to claim 4, Long discloses a barrier comprising:  
an advertisement banner **72** coupled to the barrier section (Figure 3).

As to claim 5, Long discloses a barrier wherein the plurality of horizontal support strips **30,32** are slightly elastic.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hisatomi et al. in view of Specht (US 5,661,944).

As to claim 6, Hisatomi et al. fail to disclose a barrier wherein the plurality of horizontal support strips are made of polyester.

Specht teaches a barrier wherein the plurality of horizontal support strips are made of polyester; the polyester material providing for a durable, tensioned barrier (column 2 lines 46-58). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a barrier as disclosed by Hisatomi et al. to have horizontal support strips made of polyester as taught by Specht in order to provide for a durable, tensioned barrier.

12. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Long.

As to claim 6, Long fails to disclose a barrier wherein the plurality of horizontal support strips are made of polyester.

Specht teaches a barrier wherein the plurality of horizontal support strips are made of polyester; the polyester material providing for a durable, tensioned barrier (column 2 lines 46-58). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify a barrier as disclosed by Long to have horizontal support strips made of polyester as taught by Specht in order to provide for a durable, tensioned barrier.

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**Conclusion**

The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure. The following patents show the state of the art with respect to ball joint assemblies:

Eisele (US 5,402,988), Petrozziello (US 2004/0012006), Jolliffe (US 6,685,172), Kane (US 5,029,819) and Haggard, Jr. (US 2002/0189144) are cited for pertaining to barriers comprising an advertisement banner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Ferguson whose telephone number is (703)308-8591. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MPF  
1/31/05



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